



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2019

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P (MD) .No.505 of 2018
and
C.M.P (MD) No.11908 of 2018

Kachammal ... Petitioner/Petitioner
Vs.

Veeraragahavan ... Respondent/Respondent

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to transfer G.W.O.P.No.14 of 2017 on the file of the Family Court, Sivagangai to the file of the District Court, Sivagangai.

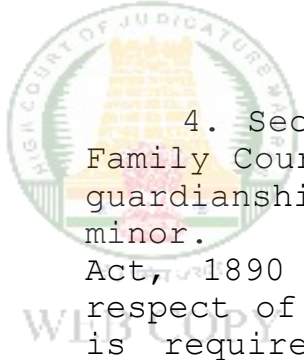
For petitioner : Mr.A.Haja Mohideen
For respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner seeking transfer of G.W.O.P.No.14 of 2017 from the file of the Family Court, Sivagangai to the file of the District Court, Sivagangai.

2. It is stated in the petition that the petitioner is the maternal grandmother of minor child V.Vikas. The respondent is the father of the minor child. The mother of the minor child died on 05.04.2017. According to the petitioner, she has been taking care of the minor child and the minor child is in her care and custody. Seeking to appoint her as the guardian to the person and property of the minor child, the petitioner has filed G.W.O.P.No.14 of 2017 before the Family Court, Sivagangai. The grievance of the petitioner is that after taking G.W.O.P.No.14 of 2017 on file, the Family Court, Sivagangai has been refusing to deal with the same on the ground that it has no jurisdiction to try the issue relating to the property. Therefore, the petitioner has approached this Court to transfer the petition in G.W.O.P.No.14 of 2017 to the file of the District Court, Sivaganai.

3. Heard the learned counsel for the petitioner. Though notice and private notice to the respondent was ordered, they were returned with an endorsement "left". Therefore, this Court is inclined to decide the matter based on the materials available on record.



4. Section 7(1)(g) of the Family Courts Act, 1984 empowers the Family Court to deal with the suit or proceeding in relation to the guardianship of the person or the custody of, or access to any minor. At the same time, Section 7 of the Guardian and Wards Act, 1890 empowers the District Court to appoint a guardian in respect of the person or property or both, of a minor, if the same is required for the welfare of the minor. Though a petition relating to guardianship of a minor can be filed under both the above provisions of law before the jurisdictional Court, when the relief of guardianship in respect of the property of the minor is also sought for, the same shall be dealt with only by the District Court in view of the special enactment under the Guardians and Wards Act, 1890. Here, in this case, the grandmother of the minor filed G.W.O.P. seeking guardianship of the minor as well as his property. Therefore, it has to be dealt with only by the District Court.

5. In view of the above, I am inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned Family Court Judge, Sivagangai is directed to transmit the entire records in G.W.O.P.No.14 of 2017 to the file of the District Court, Sivagangai, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned District Court, Sivagangai, after obtaining the records on transfer, is directed to dispose of G.W.O.P.No.14 of 2017 on merits and in accordance with law, within a period of six months from the date of receipt of records from the Family Court.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Family Court Judge,
Sivagangai.

2.The District Judge,
Sivagangai.

+1cc to Mr.A.Haja Mohideen, Advocate, SR.No.46987

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